(22)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

WRIT PETITION NO. 2065 OF 2003

PETITIONER		Prabhat Kumar Pathak, aged 17 years, through Guardian (father) Nand Gopal Pathak, S/o Shri Kedar Nath Pathak, aged 50 years, R/o Pathak Colony, Jashpurnagar, District- Jashpur (C.G.).
	- Versus-	
RESPONDENTS	1.	State of Chhattisgarh, Through its Secretary, Department of School Education, Mantralaya DKS Bhawan, Raipur (C.G.)
	2.	Chhattisgarh Board of Secondary Education, Raipur thrugh its Secretary, Pension Bada, Raipur (C.G.).
	3.	Principal, Luthran Higher Secondary School, Ichkela, Jashpurnagar.

POST FOR ORDER ON 25th July, 2003.

Sd/-
L.C. Bhadoo
Judge

(83)

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O R D E R

(25th July, 2003)

By Justice L. C. Bhadoo.

1. The petitioner has preferred this petition under Article 226/227 of the Constitution of India for seeking an order from this Court to call for the entire record and direct the Respondent No.2 to revaluate the Physics and Mathematics paper of the petitioner of the Higher Secondary School Certificate Examination 2003 conducted by the Respondent No.2.

2. Petitioner's petition is that he has remained a good student in his school career. The petitioner had appeared in the examination 2003 conducted by the Respondent No.2 from Luthran Higher Sccondary School, Ichkcla, Jashpurnagar. As the petitioner is a hard working student and had done extremely well in the

examination, he was quite hopeful to get passed in the examination with good marks but shocking to the conscious of the petitioner in the result announced by the Respondent No.2 the name of the petitioner has been placed in the array of the students who have been awarded supplementary. After seeing the mark sheet the petitioner was shocked that in most arbitrary manner only 9 marks have been awarded in Physics, not only this in the paper of Mathematics only 54 marks have been given to him contrary to his expectations. The petitioner is filing herewith the question paper and an answer book in which the petitioner has tried to reproduce the answers of the question as done by him in the examination along with model answers given in the standard books. The petitioner had submitted an application for verification of marks to the Secretary of Chhattisgarh Board of Secondary Education, but since there is no rule with regard to the revaluation and from the answers given by the petitioner in the examination it is apparent that the answer books of the petitioner has been valued in arbitrary manner and the nature of answers in both the subjects are not of descriptive nature, therefore by the revaluation of the answer books the injustice committed by the Board with the petitioner can be rectified. The petitioner is having a bright future ahead; due to the arbitrary action of the respondents his entire career will be ruined.

3. I have heard learned consul for the petitioner. He submitted that the petitioner is a brilliant student and he answered most of the questions in the paper of physics and mathematics but to his utter surprise the numbers awarded in both the papers are not

as expected by the petitioner therefore the Respondent no.2 be directed to revaluate the answer sheets of the petitioner.

4. It is admitted position that there is no provision for revaluation of the answer sheets and only rechecking of the numbers obtained at the examination can be done. If there is no regulation regarding revaluation of the answer sheets then how the respondents can revaluate the answer sheets learned counsel for the petitioner was not able to give answer to this quarry. He simply argued that the action of the respondents is arbitrary and answer sheets have not been evaluated in a expected manner.

5. The jurisdiction of this Court under Article 226 of the Constitution is an extra ordinary jurisdiction. If any, provision exists for re-valuation of the answer sheets and the concerned authorities are not acceding the request of the petitioner for re-valuation of the answer sheets, then the petitioner has a right to ask for revaluation. But where there is no provision regarding the re-valuation of the answer sheets, in that case in order to seek the remedy under Article 226 of the Constitution of India the petitioner has to make out a strong and exceptional case showing error apparent in the matter of evaluation of his answer sheets, based on the previous academic career and other relevant material through which it can be assessed that the career of the petitioner has been extremely good and looking to his past record this time something has been done unusual by the examiner while evaluating the answer sheets of the physics and mathematics. Then and then this Court can pass an order in favour of the petitioner for revaluation of the answer sheets, considering the case of the petitioner as exceptional case. Because there is a presumption of the State action and the

burden is on the person who alleges arbitrariness on the part of the authority and to prove the assertion some strong material must be on record. However, where there is no plausible reason or principle is indicated nor is it discernible and the impugned action therefore appears to be ex-facie, arbitrary, the initial burden to prove the arbitrariness is discharged shifting onus on the State to justify its action as fair and reasonable.

6. Now, in order to ascertain as to whether the petitioner has been able to make out a prima facie exceptional case in his favour so as to enable this Court to pass an appropriate order in favour of the petitioner, no record has been annexed in this petition by the petitioner showing his previous academic career in order to ascertain that the petitioner is a brilliant student. A cursory glance on the mark sheet issued by the respondent which is enclosed as Annexure P/1 shows that apart from the mathematics and physics the petitioner has got only 38 numbers out of 100 marks in English (General) and got only 47 marks out of 100 marks in Chemistry. A bare perusal of this mark sheet reveals that the petitioner is an average student and based on this mark sheet this Court is not convinced that the answer sheets of the petitioner are evaluated in unusual manner.

7. In the result the petitioner is not able to make out an exceptional case for exercising discretionary jurisdiction in his favour. As such this petition has no force, the same is liable to be dismissed and is dismissed accordingly.

Sd/-
L.C. Bhadoo
Judge